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Paper No. 7

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JUL 17 2002

In re Application of	:	OFFICE OF PETITIONS
Freire	:	
Application No. 09/950,047	:	DECISION DISMISSING
Filed: September 12, 2001	:	PETITION
Attorney Docket No. 1539(03940014AA)	:	

This is a decision on the petition filed March 20, 2002, to establish that page 17 of the specification was part of the originally filed application.

On September 12, 2001, the application was filed.

On October 18, 2001, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of September 12, 2001, and advising applicants that page 17 appeared to have been omitted.

In response, the present petition was filed alleging that page 17 was deposited on September 12, 2001. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "21 Pages in Specification" on September 12, 2001.¹

Upon review of the record, page 17 has not been located. However, the evidence is convincing that the application papers deposited on September 12, 2001, included page 17, and that page 17 was subsequently misplaced in the PTO.

Since petitioner has established that page 17 was misplaced by the Office, the petition fee of \$130 will be credited to petitioner's deposit account.

The Notice mailed October 18, 2001, was sent in error and is hereby vacated.

In view of the above, the petition would normally be granted. Unfortunately, although the papers filed on March 20, 2002, state they are accompanied by a copy of page 17, a copy of page 17 cannot be found in the file. Therefore, the petition must be **dismissed** since examination of the application cannot be satisfactorily performed without a copy of page 17. Petitioner should submit another copy of page 17 along with a renewed petition within two months. The renewed petition is free.

¹ Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
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By facsimile: (703) 308-6916
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